IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO. 8 OF 2004

R.P. Devlekar. ...Petitioner.

Versus

Union of India & Ors. ...Respondents.

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Mr. C. M. Jha i/b. Mrs. Aruna Srivastava for the Petitioner.

Mrs. N.V. Masurkar for the Respondents.

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CORAM : DALVEER BHANDARI, CJ. &

DR. D.Y. CHANDRACHUD, J.

OCTOBER 11, 2004.

P.C.:

This petition is directed against an order passed by the Central Administrative Tribunal on 2nd July 2003 upholding a penalty imposed by the Disciplinary Authority on the Petitioner for the recovery of an amount of Rs.89,599.50 from his salary at the rate of

Rs.1,000/- per month.

2. The Petitioner was employed as Senior Commercial Clerk at the Bandra Terminus. A chargesheet was issued to him alleging that on 22nd August 1994 while functioning as a Senior Commercial Clerk, he had issued a special ticket in the amount of Rs.78,986/- to M/s. Wizcraft Entertainment Agency. It is alleged that the Petitioner had failed to maintain proper working procedures, as a result of which, he had charged less than the amount that was due and payable causing a loss to the Railway of Rs.1,79,199/-. A disciplinary enquiry was held in which the charges were held to be proved. The Disciplinary Authority passed an order for the recovery of an amount of Rs.89,599.50 being 50% of the charges which were under-recovered and directed that a deduction be made at the rate of Rs.1,000/- per month from the salary of the Petitioner.

3. The Petitioner thereupon moved the Central Administrative Tribunal which has dismissed the petition by the impugned order. The Tribunal has held that the Petitioner being a Senior Commercial

Clerk was responsible and duty bound to calculate the amount in accordance with the rules. The defence of the Petitioner that the Chief Booking Superintendent, Mr. Balan had called upon him to issue the ticket has been held not to be substantiated.

4. When this petition came up before the Court for admission on 26th July 2004, Counsel for the Petitioner relied upon a circular dated 17th August 1971 in which it has been clarified that recovery from the pay as a punishment for the pecuniary loss caused by a Government servant by negligence or breach of orders should not exceed one-third of the basic pay (including dearness pay or any other allowances) and should not be spread over for a period of more than three years. In other words, it is clarified that the recovery should not exceed one year's basic pay in any case. In the present case, it was alleged that the recovery which was sought to be made was in excess of one year's basic pay and other allowances. Since this point was not urged before the Tribunal, Counsel for the Respondents prayed for an adjournment to file an affidavit and we accordingly granted liberty to the Respondents to file an additional

affidavit to deal with the submission which was urged before this Court for the first time.

5. An Affidavit has accordingly been filed of the Divisional Railway Manager, Mumbai Central, dated 8th September 2004. In the affidavit it has been stated that under Rule 11(ii) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, there is a specific power to impose a penalty of recovery from the pay of a Government servant of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders. In the Additional affidavit, it has also been stated that a clarificatory circular has been issued on 6th September 2000 wherein it has been stated that the power to effect recovery is specified in Rule 11(ii) of the CCS(CCA) Rules, 1965 and any procedural instructions cannot amend, supersede or modify the substantive provisions of Rule 11(ii). In the circular, it has also been clarified that while it is expected that in imposing the penalty of recovery of pecuniary loss the Disciplinary Authority should not display such severity as a result of which a Government servant suffers hardship disproportionate to his

negligence or misconduct, a rigid limit cannot be fixed for the purpose of recovery. The entire loss can be recovered from the delinquent official, but the recovery may be spread over till the entire loss is recovered.

6. In view of the contents of the affidavit filed on behalf of the Railways on 8th September 2004, we do not find any merit in the grievance of the petitioner. The power to effect recovery is prescribed in Rule 11(ii) of the CCS(CCA) Rules, 1965. That power is not subject to a condition that the extent of the recovery should be confined only to a specified proportion of the basic pay. No such restriction as is sought to be imposed in the circular dated 17th August 1971 is to be found in Rule 11(ii). A circular which is in the nature of an executive instruction cannot override statutory rules. Hence it has been clarified in the subsequent circular that the instructions contained in the previous circular could not over ride the provisions of the rules. However, it has also been clarified that the disciplinary authority while exercising its jurisdiction should not impose a penalty which is disproportionate to the extent of the negligence or

misconduct. In the present case, the Tribunal has held that the Petitioner was a Senior Commercial Clerk and he was under legal duty to calculate the fare in accordance with the Rules. The Tribunal noted that the petitioner had not led any evidence to show that Mr.Balan, who was the Chief Booking Superintendent had given him the exact figure of the amount or any calculation sheet for the fare which was to be charged from M/s. Wizcraft Entertainment Agency. The Tribunal has not found any infirmity in the disciplinary proceedings. In view of the well settled parameters for the exercise of the jurisdiction under Article 226 of the Constitution in disciplinary matters, we do not find any infirmity, error or perversity in the order of the Tribunal which would warrant interference of this Court. The penalty which has been imposed on the Petitioner is clearly sustainable with reference to the provisions of Rule 11(ii). The recovery which is ordered is to the extent of 50% of the amount which is undercharged. There is no merit in the petition which is accordingly rejected.

CHIEF JUSTICE

DR. D.Y. CHANDRACHUD, J.